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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/541,392  | 07/01/2005  | Walter Eugster       | 05471.0061            | 6354             |
| 22852   | 7590        | 12/08/2009           | EXAMINER              |                  |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER<br>LLP<br>901 NEW YORK AVENUE, NW<br>WASHINGTON, DC 20001-4413 |             |                      | GWARTNEY, ELIZABETH A |                  |
|   |             | ART UNIT             | PAPER NUMBER          |                  |
|   |             | 1794                 |                       |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/541,392             | EUGSTER ET AL.      |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Elizabeth Gwartney     | 1794                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 October 2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9,10 and 13-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-10 and 13-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 10/05/2009 has been entered.
2. Claims 11-12 have been cancelled. Claims 9-10 and 13-28 are pending.
3. The previous claim objections, 112 1<sup>st</sup> Paragraph rejections specific to claims 13, 14-20, 22 and 25 and 112 2<sup>nd</sup> Paragraph rejections have been withdrawn in light of applicants' submission filed 10/05/2009.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
5. Claims 9-10 and 13-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 9, while there is support in the specification for adding 2% water in a second wetting process (p.3/paragraph 5) or as in originally filed claim 1, for superficially

wetting the wheat grain in a second wetting process, there is no support for wetting *a surface region* of the grains in a second wetting process. Here, the limitation “a surface region” further limits the originally disclosed limitation of wetting or superficially wetting and is not supported by the specification or originally filed claims.

Regarding claim 28, while there is support in the specification for conditioned wheat moving into a wetting aggregate *by way of a magnet* (p. 3/paragraph 5) and for *using a magnet to guide* wetted wheat to the shelling machine (p.4/paragraph 1), there is no support for using a *magnetic device to control* the movement of the grains to a wetting aggregate.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 9-10, rejected under 35 U.S.C. 103(a) as being unpatentable over Müller (US 5,650,018) in view of Satake (US 5,025,993).

Regarding claims 9-10, Müller discloses a method for the preparation of wheat grains for milling (see Figure 3, C8/L36-41) including: (a) cleaning grain in a first dry state; (b) wetting the grain in a second stage (i.e. first wetting process); (c) conditioning the grain for 12-48 hours; (d) wetting the conditioned grain to moisten the surface of the grain (i.e. second wetting process); (e) removing part of the outermost skins (i.e. shelling) by scouring; and (f) grinding the scoured wheat grains (C4/L40-C5/L16, 34-38, C8/L24-29, 33-35, C9/L14-30, Figure 7).

While Müller discloses grinding the scoured wheat grains, the reference does not disclose that the method includes polishing the grains.

Satake teaches a method for making flour including polishing grain to produce polished grains (Abstract, C2/L25-27)). Satake teaches grindingly polishing cereal grains to partly strip and remove from each grain a surface portion including layers of pericarp, testa, exosperm and aleuron (C2/L33-62). Satake teaches that a flour free of pericarp, testa, exosperm and aleuron material is recovered using the grinding

Müller and Satake are combinable because they are concerned with the same field of endeavor, namely, processing grain for flour. It would have been obvious to one of ordinary

skill in the art at the time of the invention to have polished, as taught by Satake, the ground grains of Müller for the purpose of making polished grain free of pericarp, testa, exosperm and aleuron.

Regarding claim 13, modified Müller discloses all of the claim limitations as set forth above and that the grinding of the grains occurs in a mill (Figure 1/75-77, C8/L35-38). Given that Müller discloses a vertical path conveying the grains in the mill (Figure 1/75-77), it is clear that the grains would inherently avoid contacting any horizontal conveying element in the mill.

Regarding claim 14 and 17-18, modified Müller discloses all of the claim limitations as set forth above and that the abraded material (i.e. residue) is collected and removed as the outermost skin is removed from the wheat grains (C7/L39, C8/L65-C9l?3). Further, Müller discloses separating the abraded material from the clean wheat grain through screening sections (i.e. sifting) (C9/L1-3).

Regarding claim 21, modified Müller discloses all of the claim limitations as set forth above. Further, Müller discloses that the grain is freed of loose skins using a winnower (i.e. separated by means of a current of air) (C7/L39-41).

Regarding claim 22, modified Müller discloses all of the claim limitations as set forth above. Given that Müller discloses a second wetting process wherein water is added only for the purpose of moistening the surface of the grain (C8/L27-29), it is clear that the second wetting process is light relative to the first wetting process.

Regarding claims 23-24, modified Müller discloses all of the claim limitations as set forth above. Müller also discloses a wetting device (i.e. wetting aggregate) and scouring machine (i.e. shelling mechanism) downstream of a weighing machine (C7/L18-52). Further, Müller discloses

that the cereal grain flows from the weighing machine, to the scouring machine, and further flows to the wetting device (C7/L18-52).

Regarding claim 25, modified Müller discloses a process wherein the scouring machine (i.e. shelling mechanism) includes: (a) a rotatable rotor (C8/L54-58, Figures 5-6), a stator (Figures 5-6), screens (i.e. sifting basket) surrounding the rotor (Figures 5-6/109). Müller discloses that the separation (i.e. sifting) of the shelled grains is provided by the screens (i.e. sifting basket) (C8/L65-C9/L3).

Regarding claim 26, modified Müller discloses all of the claim limitations as set forth above. Note, with regard to the prior art, the phrase "roll" encompasses the entire scouring shell. Müller discloses that the scouring shell comprises screens and grates including slits uniformly spaced apart (C8/L61-67, Figures 5-6/109). Given that Müller discloses a scouring shell with screens and grates comprising slits as presently claimed, it is clear that the slits would inherently allow air to enter the processing zone during scouring (i.e. shelling).

Regarding claim 27, modified Müller discloses all of the claim limitations as set forth above. Given that Müller discloses a process identical to that presently claimed wherein only 0.1 to 0.5% water is added after conditioning (C8/L22-29), it is clear that the moisture of the conditioned grains would inherently be 2% after the second wetting process.

9. Claims 15-16 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Müller (US 5,650,018) in view of Satake (US 5,025,993) as applied to claim 9 above, and further in view of Paquette (US 4,314,925).

Regarding claims 15-16 and 19-20, modified Müller discloses all of the claim limitations as set forth above. While Müller discloses the recovery of abraded grain material, the reference does not disclose pressing the material into pellets and using the pellets as fuel.

Paquette teaches a process for preparing solid fuel from grain including passing grain residue through a pelletizing mill where it is pressed into pellets (C2/L45-62), Figure).

Müller and Paquette are combinable because they are concerned with the same field of endeavor, namely, grain processing. It would have been obvious to one of ordinary skill in the art at the time of the invention to have pelletized abraded grain material, i.e. residue, as taught by Paquette, from the grain cleaning process of Müller for the purpose of making a solid fuel and utilizing the bi-product of the grain cleaning process.

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Müller (US 5,650,018) in view of Palyi (US 3,251,558).

Regarding claim 28, Müller discloses a method of cleaning grains including: (a) cleaning grain in a first dry state and wetting the grain in a second stage (i.e. first wetting process); (b) feeding the grains to a wetting device (i.e. wetting aggregate); and (c) adding 0.1 to 0.5% water (C4/L40-C5/L16, 34-38, C7/L33-C8/L29). Müller also discloses passing the grain into a scoring machine (i.e. shelling machine) dry and wet by way through an inlet via a feed screw to remove part of the outermost skins (i.e. shelling) (C7/L33-C8/L29, Figure 5). Further, Müller discloses that the grains are exposed to a winnower (i.e. current of air) in the scouring machine, the abraded material is taken away from the scouring machine via a collecting hopper (C7/L37-38).

Given that Müller discloses a scouring machine with a processing zone as presently claimed, it is clear that pressure would inherently be generated as the grain is scoured (i.e. shelled).

Müller does not disclose using a magnetic device to control the movement of the grains to a wetting aggregate and from the wetting aggregate to a scouring machine.

Palyi teaches an apparatus for producing wheat flour wherein a permanent magnet is mounted on the gear box to remove scrap metal particles in the wheat as the wheat flows by (C4/L38-43).

Müller and Palyi are combinable because they are concerned with the same field of endeavor, namely, processing wheat grain. It would have been obvious to one of ordinary skill in the art to have placed permanent magnets, as taught by Palyi, at any step, including before the wetting device and scouring machine, in the grain cleaning process of Müller for the purpose of removing any scrap metal pieces in the grain.

#### ***Response to Arguments***

11. Applicant's arguments filed 10/05/2009 have been fully considered but they are not persuasive.

Applicants explain that, as presently amended, claim 9 recited "shelling the grains after the second wetting process in a shelling machine". Applicants find that Müller does not disclose a shelling of the grains *after* the second wetting process.

Attention is directed to column 9, lines 14-30 and Figure 7 of Müller wherein a process for moist or wet scouring is disclosed. Specifically Müller discloses a device for cleaning grains

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wherein the grain is scoured, i.e. shelled, after a second wetting process in a scouring machine (see Figure 7 wherein grain is subjected to a second wetting process at 22" and subsequently scoured at 42').

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874. The examiner can normally be reached on Monday - Friday; 7:30AM - 3:30PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./  
Examiner, Art Unit 1794

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1794